

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN JOSEPH SULLIVAN,

Plaintiff,

v.

STATE OF MISSOURI, et al.,

Defendants.

No. 4:21-CV-298 SEP

MEMORANDUM AND ORDER

Before the Court is Plaintiff's Motion for Extension of Time to Pay Appellate Filing Fee. Doc. [17]. Because the appellate filing fee is paid by an automatic deduction from Plaintiff's prison account, the Court will deny Plaintiff's motion.

Background

Plaintiff John Joseph Sullivan, an inmate at Farmington Correctional Center, filed this action pursuant to 42 U.S.C. § 1983 on March 9, 2021, against the Missouri Department of Corrections (MDOC); Corizon, LLC; and John Doe (Male Nurse). The allegations in the complaint concerned medical treatment he received for gastrointestinal symptoms. Because Plaintiff had filed three prior actions that had been dismissed as frivolous, malicious, or for failure to state a claim upon which relief could be granted,¹ the Court dismissed this action pursuant to 28 U.S.C. § 1915(g).

Plaintiff appealed the dismissal of his complaint on May 26, 2021. He sought to proceed *in forma pauperis* on appeal. On June 24, 2021, the Eighth Circuit Court of Appeals denied Plaintiff's motion and dismissed the appeal for failure to pay the filing fee or demonstrate that Plaintiff was "under imminent danger of serious physical injury," as required under 28 U.S.C. § 1915(g). The Eighth Circuit stated: "The full \$505 appellate and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court."

On June 30, 2021, this Court issued the following Order:

¹ *Sullivan v. Harris*, 18-cv-04203 (W.D. Mo. Sept. 28, 2018); *Sullivan v. Bates Cnty. Cir. Ct.*, 18-cv-00861 (W.D. Mo. Oct. 29, 2018); *Sullivan v. Harris*, 19-cv-04039 (W.D. Mo. Feb. 22, 2019); *Sullivan v. Missouri*, 18-cv-01816 (E.D. Mo. Oct. 23, 2018); *Sullivan v. Cofer*, 19-cv-01504 (E.D. Mo. May 23, 2019); *Sullivan v. Austin*, 19-cv-02044 (E.D. Mo. July 18, 2019).

This matter is before the Court on remand from the United States Court of Appeals for the Eighth Circuit for collection of the appellate filing fees pursuant to 28 U.S.C. § 1915(b). The Court will direct the Clerk of Court to request that the agency having custody of Plaintiff begin making payments in accordance with 28 U.S.C. § 1915(b)(2) until the \$505 appellate fee is paid in full.

On June 30, 2021, a letter was sent to the financial administrator at MDOC, instructing MDOC to automatically withdraw funds from plaintiff's inmate account in accordance with 28 U.S.C. § 1915(b)(2) until the full appellate filing fee of \$505 is paid.

Discussion

Plaintiff seeks a sixty (60) day extension of time to pay the appellate filing fee and states that he "would like to try to work something out for payment." Because the filing fee is automatically deducted from his prison account, Plaintiff's request for an extension is denied.

The Prison Litigation Reform Act sets forth the requirements for prisoner payments as follows:


After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The Court of Appeals did not require Plaintiff to pay an initial partial filing fee in this case. Rather, MDOC was instructed to forward payments from Plaintiff's prisoner account to the Clerk of Court each time the amount in the account exceeds \$10 until the full appellate filing fee of \$505 is paid. As such, it is unnecessary for the Court to grant Plaintiff an extension of time in this action.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for Extension of Time to Pay Appellate Filing Fee (Doc. [17]) is **DENIED**.

Dated this 8th day of September, 2021.



SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE